

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

AUBURN MEMORIAL MEDICAL SERVICES, P.C.¹

Employer

and

Case 03-RC-226811

1199SEIU HEALTHCARE WORKERS EAST

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Auburn Memorial Medical Services, P.C. (AMMS), is a medical service provider based in Auburn, New York. Petitioner seeks to represent a unit of all full-time and regular part-time RNs, LPNs, X-Ray Technicians, X-Ray Assistants, X-Ray Assistant/Receptionists, Ultrasound Technicians, Phlebotomists, Phlebotomist/MedTechs, Medical Assistants, Medical Assistant/Athletic Trainers, Surgical Schedulers, Receptionists, Administrative Assistants, Administrative Assistant/Schedulers, Transcriptionists, Admin Coordinators, LPN Coordinators, Billers, Senior Billers, Coders, Prior Authorization Representatives, Triage Specialists and Provider Enrollers employed at the Employer's 17 Lansing Street, Suite 1157 Auburn, New York; 77 Nelson Street, Suites 120, 130, 220, 240, and 320, Auburn, New York; 17 East Genesee Street, Suite 101, Auburn, New York; 24 State Street, Seneca Falls, New York; 161 Genesee Street, Suites 106 and 203, Auburn, New York; 143 North Street, Auburn, New York; and 37 West Garden Street, Suites 105, 201 and 203, Auburn, New York locations.²

A hearing officer of the Board held a hearing in this matter and the parties subsequently filed briefs with me. The hearing addressed the Employer's contentions that the petitioned-for multi-facility unit is not appropriate and that the professional unit must also include fourteen nurse practitioners, seven physician assistants, four nurse midwives, and one clinical coordinator. The Petitioner asserts that the multi-facility unit is appropriate and that the nurse practitioners, physician assistants and nurse midwives should be excluded based on community of interest considerations and that the clinical coordinator should be excluded as a statutory supervisor.

As explained below, based on the record, the briefs, and relevant Board law, I find the record establishes that the petitioned-for registered nurses, the only professional employees in the unit

¹ The correct legal name of the Employer is Auburn Memorial Medical Services, P.C.

² The parties stipulated that any unit found appropriate should include these classifications. They also stipulated the unit should exclude confidential employees, guards, and supervisors as defined in the Act.

sought by the Petitioner, share a community of interest sufficiently distinct from the nurse practitioners, physician assistants, and nurse midwives to constitute an appropriate voting unit, and therefore the disputed classifications should not be included in the unit. I also find that the clinical coordinator must vote under challenge. I further find that the multi-facility unit is appropriate.

I. FACTS

The Employer provides primary, specialty, and urgent care services in the Auburn, New York community. The following sixteen offices are divided amongst seven addresses operated by the Employer:

- 17 Lansing Street, Auburn NY 13021 (Auburn Community Hospital)
 - AMMS Family Medicine (Family Medicine)
- 77 Nelson Street, Auburn, NY 13201
 - Auburn Ear, Nose & Throat Services (ENT); Suite 240
 - Surgical Services of Auburn (SSA); Suite 130
 - AMMS Nephrology (Nephrology); Suite 130
 - Auburn Orthopedic Specialists (Orthopedics); Suite 120
 - Auburn Pulmonary & Sleep Medicine (Pulmonary); Suite 240
- 24 State Street, Seneca Falls, NY 13140
 - Auburn Gastroenterology at Seneca Falls (Seneca Falls Gastroenterology)
- 143 North Street, Auburn, NY 13201
 - Auburn Obstetrics & Gynecology (OB/GYN)
- 37 West Garden Street, Auburn, NY 13201
 - Auburn Primary Care (Primary Care), Suite 201
 - Auburn Regional Diabetes & Endocrinology (Endocrinology), Suite 201
 - Urgent Care of Auburn (Urgent Care), Suite 105
 - Children's Health Specialists, Suite 203
- 17 East Genesee Street, Auburn, NY 13201
 - Auburn Gastroenterology at Auburn (Auburn Gastroenterology), Suite 101
 - Neurology Services of Auburn (Neurology), Suite 101
- 161 Genesee Street, Auburn, NY 13021
 - Auburn Internal Medicine & Pediatrics (AIMP); Suite 203
 - Upstate Urology of Auburn (Urology); Suite 106

1. Skills, Duties, and Working Conditions

There are 23 classifications in the petitioned-for bargaining unit. The employees that share a classification all have nearly identical skills, duties, working conditions, and job functions. For certain classifications, different specialties necessitate the development of skills unique to that office. For others, like medical assistants and receptionists, their roles are wholly interchangeable. All of the personnel that provide medical care must have medical degrees and certifications specific to their classifications. None of the petitioned-for classifications can prescribe drugs or independently order laboratory tests for patients. All AMMS employees operate under the same employee handbook and are reviewed with the same evaluation form.

All of the petitioned-for classifications are offered the same fringe benefits and are paid hourly without a bonus structure. With three exceptions,³ all of the petitioned-for employees starting salaries are at or below \$20 an hour. The petitioned-for classifications do not individually contract with the Employer. They all⁴ work roughly the same shifts, Monday to Friday from 7:30 a.m. or 8:00 a.m. until 4:00 p.m. or 4:30 p.m., and do not have on-call responsibilities.

The Employer seeks to add four professional classifications to the unit: nurse practitioner, physician assistant, and nurse midwife, and clinical coordinator. The skills, duties, and working conditions of these classifications are described in detail below.

1. Nurse Practitioners and Physician Assistants

Nurse practitioners and physician assistants operate in a capacity similar to physicians. Like doctors, nurse practitioners and physician assistants make referrals, treat patients, and help to manage their conditions on a daily basis. This is true across practice groups. In Urgent Care, the doctor only works one to two shifts a month, so when he is not present, patients will see either a physician assistant or a nurse practitioner. In Urgent Care, physician assistants and nurse practitioners independently order lab tests, prescribe drugs, perform excisional biopsies, suture patients, order IVs and order splints. Registered nurses (RNs) in the same practice cannot exert such authority.

The full-time nurse practitioners and physician assistants are salaried, unlike the petitioned-for RNs. When broken down into an hourly rate, the nurse practitioner and physician assistant salaries range from \$40.87 to \$72.12 an hour.⁵ Nurse practitioners and physician assistants have independent employment agreements with the Employer.

³ The RNs earn between \$21.25 and \$30 an hour, the X-Ray Technician earns between \$23 and \$32 an hour, and the Ultrasound Technician earns between \$30 and \$46 an hour.

⁴ The one Medical Assistant/Athletic trainer is an exception. As part of his duties he occasionally works over the weekend and past normal working hours to attend sporting practices and events. Urgent Care is also different as they have 12 hour shifts and also work weekends.

⁵ With the exception of the ultrasound technicians, the other employees make less than half of this wage.

2. Midwives

The Employer employs three nurse midwives and one certified midwife. While the certified midwife and the nurse midwives have identical duties, they have different certifications.⁶ The midwives must hold and maintain specific midwifery licensure with the state. This includes maintaining federal and state registration to prescribe and dispense controlled substances. The midwives' roles are not interchangeable with any of the other practices as they are specialized in mother and child wellbeing. Midwives see patients and deliver babies. OB/GYN patients will do their post-ultrasound follow up with either a physician or a midwife.

Like the nurse practitioners and physician assistants, midwives enjoy independent employment agreements with the Employer. They are salaried and operate under a bonus structure. When broken down into an hourly rate, their salaries range from \$43.27 to \$60.10 an hour. Unlike the petitioned-for RNs, midwives also have on-call obligations in addition to their regular 40 hour work week.

3. Clinical Coordinator

There is currently one clinical coordinator, who works in Orthopedics. Though the clinical coordinator is described by one witness as a "nurse" it is unclear whether that is a RN, a licensed practical nurse (LPN), or a nurse practitioner. Similarly, the record does not demonstrate her daily job duties. This is a newly created position that is salaried.

2. Functional Integration

Generally, all employees work to ensure that individual patients are treated appropriately across specialties. To that end, patients are referred to different practices based on need. Every practice, except Urgent Care, uses the same medical electronic record system, MEDENT. Urgent Care employees are able to access MEDENT to retrieve patient records. In addition to making the typical referral phone calls, all practices that use MEDENT are able to send triage messages.⁷ Similarly, insurance pre-authorizations occasionally involve staff from multiple offices working on the same patient. Transcriptionists also work across multiple offices as they transcribe for multiple physicians from different specialties. All of the offices also share a hospital-based supply courier. There was no evidence that offices share medical supplies or medical equipment. They do, however, share other parts of their daily functions. In one location five offices shares a time clock. In another, two suites share a postage meter. In a third, they share a break room.

3. Employee Contact and Interchange

There are a number of medical offices that make up the Employer's organization. As part of their duties, the employees of these practices contact one another for referrals and insurance pre-

⁶ The certified midwife is not a RN, but the state does not require midwives to be RNs.

⁷ Triage messages are electronic communications sent to another office's doctor or receptionist about a patient to ask a question or schedule an appointment.

authorizations. Referrals largely occur over the phone, but some offices, like Orthopedics, may handle that transaction in person. Different offices perform varying quantities of referrals based on the type of specialty. In some offices, cross-office referrals happen daily. Receptionists also send daily cross-practice triages. Similarly, receptionists are responsible for speaking to other offices to clarify and resolve any uncertainty in a patient's medical file.

Employee contact necessarily occurs where different specialties share an office space or are located in the same building. Nephrology and Family Medicine share a receptionist and checkout person. The Urology receptionist uses the AIMP's postage meter daily and interacts with AIMP employees at that time. The LPN who works in the SSA Suite 130 will frequent the other SSA suite to verify patient information a few times a week and works there approximately once a quarter.

Offices with multiple suites covering the same specialty experience frequent interchange. The two Orthopedics suites freely exchange employees. Similarly, there is frequent interchange between the two Gastroenterology offices. The Auburn Gastroenterology scheduler is also the checkout/scheduler for Seneca Falls Gastroenterology; she splits her time at the offices. A Gastroenterology LPN holds a similar schedule. Gastroenterology medical assistants and receptionists also temporarily switch between Gastroenterology offices to cover for vacations and other absences.

There are three⁸ employees who are part of the Employer's floating program. Their role is to travel to other offices and fill in for missing personnel. One employee is listed as a medical assistant for Primary Care, but floats two to three times a week to Family Medicine, ENT, Urology, or Urgent Care based on need. She also occasionally acts as a receptionist. A second employee was leased to a particular doctor on September 13 of this year, but historically was stationed at Primary Care and floated to Urology, Orthopedics, Family Medicine, Nephrology, ENT, Pulmonary, and Urgent Care roughly once a week. A third employee is a float receptionist, based in ENT and floats to another location approximately once per week.

In addition to the three designated floats, employees float to different offices to cover gaps. The record provides extensive examples of interchange. For instance, the medical assistants temporarily switch offices, on as much as a weekly basis, to cover for absent employees. Other classifications can act as a substitute for absent employees, but this is done on a case by case basis as specialized medical knowledge can play a role in the adequacy of the coverage. In Urology, there are floating nurses a few times a month and floating receptionists which occur less frequently. The receptionist and x-ray technician floats from her permanent position in Orthopedics to other departments like ENT, Pulmonary, Neurology, and Urgent Care as a receptionist. Orthopedics receives about three floats a month and that once or twice a month the RNs float from Orthopedics to other offices such as ENT, Pulmonary, Primary Care, and Endocrinology. One medical assistant floated to Orthopedics once every few months before taking a permanent position in OB/GYN. Receptionists, LPNs, and RNs all float to Urgent Care to cover for absences, though the frequency varies. The Nephrology LPN works for Family

⁸ There was a fourth designated floater, a medical assistant, who has been stationed in Pulmonary for the last 3 months.

Medicine at least a few times a month, though that figure may increase based on vacation schedules.

Employees can, and have, permanently transferred offices as well. In 2018 there were three permanent transfers. A medical assistant who worked in the OB/GYN office left to become a float medical assistant, and then returned to the OB/GYN office as a receptionist, though she will occasionally work at Urgent Care after hours.⁹ In another instance an Urgent Care RN permanently transferred to work as a RN in the Orthopedics office. An LPN transferred from Children's Health Services to Orthopedics.

4. Centralized Control of Management and Supervision

Valerie Collins,¹⁰ the director of operations, oversees the operations for all the Employer's locations. Each office also has a practice manager, though some practice managers may oversee multiple practices. In addition to her duties as director of operations, Collins also acts as the practice manager for Family Medicine, ENT, Pulmonary, Nephrology, and both SSA suites. Rita Sheils acts as the practice manager for both Primary Care and Endocrine. Sheils also acts as the nurse manager for AMMS. LeeAnn Stock is the practice manager for the AIMP practice as well as Urology. Linda Ogar oversees Auburn Gastroenterology, Seneca Falls Gastroenterology, and Neurology. Judy Selover manages the Children Health Specialist practice. Nancy Murray manages OB/GYN. Sheri Clark manages Orthopedics. Blythe Fawcett is a physician assistant who also acts as the Urgent Care practice manager.

5. Geographic Proximity

The Employer's facilities are located in and around the city of Auburn. Multiple clinics share one street address, and one, Nephrology and Family Medicine, share a suite.

6. Bargaining History

AMMS offices have not been represented by a labor organization.

II. ANALYSIS

A. The Multi-facility Unit is Appropriate

The general rule is that a single-plant unit is presumptively appropriate. *Trane*, 339 NLRB 866, 867 (2003). However, when a union petitions for a multi-facility unit, the single-facility presumption does not apply and need not be overcome; the question is simply whether the petitioned-for unit is an appropriate one. *Hazard Express, Inc.*, 324 NLRB 989, 989 (1997) (citing *NLRB v. Carson Cable TC*, 795 F.2d 879, 886-87 (9th Cir. 1986); *Capital Coors Co.*, 309 NLRB 322, 325 (1992)).

⁹ There are multiple instances in the record where employees work in Urgent Care in addition to their regular shifts.

¹⁰ Her office is in ENT.

In its decisions on multi-facility units, the Board has repeatedly emphasized that such units should correspond to employers' administrative groupings. *See, e.g., Exemplar, Inc.*, 363 NLRB No. 157 (2016) (finding petitioned-for unit appropriate because it embraced all the Employer's facilities in San Francisco, supervised by a regional manager, and thereby corresponds to a distinct administrative grouping); *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000) (finding the petitioned-for unit of two of the employer's facilities in the San Francisco area not to be appropriate where, inter alia, "[t]he proposed unit [did] not conform to any administrative function or grouping of the Employer's operations.")

When examining a petitioned-for multi-facility unit, the Board focuses on six factors: (1) similarity in skills, duties, and working conditions; (2) functional integration; (3) employee contact and interchange; (4) centralized control of management and supervision; (5) geographic proximity; and (6) bargaining history. *See, e.g., Exemplar, Inc.*, 363 NLRB No. 157 (2016); *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005); *Bashas', Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897, 897 (2002). *See also Clifford W. Perham, Inc.*, Case 01-RC-191238, 2018 WL 329938 (Jan. 4, 2018) (in post-*PCC Structurals* order denying review of regional director's decision and direction of election, applying traditional multi-facility standard).

1. The Skills, Duties, and Working Conditions Factor Weighs in Favor of the Multi-Facility Unit

The petitioned-for employees across the multiple facilities share similar skills, duties, and working conditions within their own classifications. They are all paid similarly and work similar hours. The employees, regardless of their location, are offered the same fringe benefits. They all operate under a common handbook and are reviewed with the same evaluation form. The offices do the same work, but within the confines of their individual specialties. This necessarily causes minor differences in the development of skills. However, their underlying certifications are uniform and their duties are the same. This factor weighs in favor of the multi-facility unit.

2. Employees are Functionally Integrated

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business, such as when employees in a unit sought by a union work on different phases of the same product or as a group provide a service. Another example of functional integration is when the employer's work flow involves all employees in a unit sought by a union. *See Transerv Systems*, 311 NLRB 766, 766 (1993). The Board has found evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists and gives the existence of functional integration greater weight. *Id.*

Here, the clinics produce a joint service; providing comprehensive healthcare to the Auburn community. A patient may need to be seen by multiple AMMS offices to resolve an ailment or to have all of their concerns addressed. The employees from different specialties work together to ensure that insurance pre-authorizations are complete and patients have referrals to other offices. The Employer has also established a floating program where employees float to offices of

different specialties to cover for absent employees. This demonstrates integration in the petitioned-for unit and favors finding a multi-facility unit appropriate.

3. Employees Experience Frequent Contact and Interchange

The Board has held that frequency of employee interchange is a critical factor in determining whether employees who work in different groups or facilities share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Assoc.*, 301 NLRB 400, 401 (1991) (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981)). Evidence of permanent transfers is relevant but not as important as evidence of temporary interchange. *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987).

As detailed above, there is extensive record evidence of cross-office employee contact and interchange. Referrals and triages are important daily duties which necessarily involve cross-office contact. Insurance pre-authorizations and patient clarification questions also involve daily cross-office contact. Sharing an office space or building also leads to employee contact. Five offices share one time clock, two suites share a postage meter, and two others share a break room. This necessarily supposes daily cross-office contact, however cursory. The record is also replete with instances of both temporary and permanent interchange. The Employer currently has three employees designated as part of its floating program and other employees also float to different offices to cover gaps. While evidence of permanent transfers is not weighted as heavily as that of temporary interchange, there were three permanent transfers in 2018 alone.¹¹

The amount of contact, temporary transfers, and permanent transfers all weigh in favor of the petitioned-for multi-facility unit.

4. Management and Supervision is Centralized

In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, fire, or discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resource*, 301 NLRB at 402; *NCR Corp.*, 236 NLRB 215, 216 (1978). Supervision is less important than the degree of interchange, contact and functional integration. *Casino Aztar*, 349 NLRB 603, 607 n.11 (2007).

There is centralized control over the individual practice groups through director of operations Collins. In that capacity, Collins oversees every office. Similarly, there are practice managers who oversee each group. One practice manager, Rita Sheils, also schedules and assigns the nurses as the nurse manager. Some of these practice managers oversee as many as five individual specialties. Human Resources is also centralized. Linda Daley is the Vice President of Human Resources for all of AMMS. While there are individual practice managers for each location, there is one overarching director of operations, Human Resources department, and nurse manager. Importantly, the individual practice managers oversee multiple practices, which in

¹¹ The record revealed additional evidence of permanent transfers earlier than January 1, 2018.

essence equates to multiple offices sharing one manager. Thus, this factor weighs in favor of a multi-facility bargaining unit.

5. The Clinics are in Close Geographic Proximity

The issue in applying this factor is, first, whether the distance would permit full employee participation in union activities. *Exemplar, Inc.*, 363 NLRB No. 157 (Mar. 31, 2016) slip op. at 6. Second, the Board has been concerned less with absolute distances between included facilities than with the relative distance between the included and excluded facilities. *See, e.g., Lab Corp. of Am.*, 341 NLRB 1079, 1083 (2004) (finding the relative proximity of excluded facilities to weigh against finding the unit appropriate, citing *Bashas'*, 337 NLRB at 711).

In this case, distance is not a hindrance to employee participation in union activities. Based on the addresses in the record, I note that they are in close proximity. All of the petitioned-for practices are located in and around the city of Auburn. All of the employees who work in Seneca Falls travel to Auburn weekly to work in the other office of that specialty.¹² There are no excluded facilities to consider. No party raised geographic proximity as an impediment to participate in union activities. Thus, this factor weighs in favor of finding the multi-facility unit appropriate.

6. There is No Bargaining History Between the Parties

The weight given to a prior history of collective bargaining is “substantial” but not “conclusive.” *Turner Indus. Grp., LLC*, 349 NLRB 428, 430-31 (2007) (citing *A.C. Pavement Stripping Co.*, 296 NLRB 206, 210 (1989)). The Board has found an employer’s history of bargaining in similar units of employees to weigh in favor of finding a unit to be appropriate. *Spartan Dep’t Stores*, 140 NLRB 608, 610 (1963) (existence of other citywide bargaining units suggested appropriateness of petitioned-for citywide unit).

Here, there is no prior history of the Employer bargaining in similar units of employees. Accordingly, that factor weighs neither for nor against the appropriateness of the petitioned-for unit.

7. Summary

Of the factors discussed above, none weigh against finding the petitioned-for multi-facility unit appropriate. I therefore conclude that the petitioned-for multi-facility unit is appropriate for the purposes of collective bargaining.

B. Professional Employee Voting Unit Appropriateness

When examining the appropriateness of a unit, the Board must determine not whether the unit sought is the only appropriate unit or the most appropriate unit, but rather whether it is “an

¹² The converse is also true with the exception of one receptionist who does not work in Seneca Falls.

appropriate unit.” *Wheeling Island Gaming*, 355 NLRB 637, 637 n. 2 (2010) (emphasis in original) (citing *Overnite Transp. Co.*, 322 NLRB 723 (1996)). In determining whether a unit is appropriate, the Board looks at whether the petitioned-for employees have shared interests. *See Wheeling Island Gaming*, 355 NLRB at 637. Additionally, the Board analyzes “whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from that unit to warrant a separate bargaining unit.” *PCC Structurals*, 365 NLRB No. 160, slip op. at 11 (Dec. 15, 2017) (emphasis in original). *See also Wheeling Island Gaming*, 355 NLRB at 637 n. 2 (the Board’s inquiry “necessarily proceeds to a further determination of whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant establishment of a separate unit.”) In weighing the “share and distinct interest of petitioned-for and excluded employees [...] the Board must determine whether ‘excluded employees have meaningfully distinct interest in the context of collective bargaining that *outweigh* similarities with unit members.’” *PCC Structurals, Inc.*, 265 NLRB No. 160, slip op. at 11 (emphasis in original) (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784 (2d Cir. 2016)). Once this determination is made, “the appropriate-unit analysis is at an end.” *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11.

In contrast to the Board’s standard under *Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB 934 (2011), “at no point does the burden shift to the employer to show that any additional employees it seeks to include share an overwhelming community of interest with employees in the petitioned for unit.” *PCC Structurals*, 265 NLRB No. 160 slip op. at 11. Rather, “parties who believe that a petitioned-for group improperly excludes employees whose interests are not sufficiently distinct from those employees within the proposed group will [...] introduce evidence in support of their position.” *Id.*

To determine whether a unit is appropriate, the Board looks at traditional community of interest factors, namely: whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123, 125-26 (2002).

1. The Petitioned-for Unit Properly Excludes Nurse Practitioners, Physician Assistants, and Midwives

To start, both parties agree that the Employer’s RNs are appropriately included in a professional employee voting unit, but as noted above disagree on whether the professional unit must also include nurse practitioners, physician assistants, and midwives. I conclude that the positions of nurse practitioners, physician assistants, and midwives have important and significant distinguishing features that weigh against requiring that they be included in a voting unit with RNs. The employees in these three disputed classifications undergo specialized training and must maintain unique licensures. All of the employees in these three classifications enjoy considerably more independence than the petitioned-for RNs. They are authorized to prescribe medications and treatments, order diagnostic tests, and refer patients for other medical services. They function more like physicians than nurses. RNs are not authorized to do any of these

functions. Furthermore, the employees in these classifications also have individual employment contracts with AMMS, which provide salaries that are considerably higher than the hourly wage paid to RNs. In some instances the hourly equivalent rate for physician assistants and nurse practitioners is more than double the high end of the wage scale for the RNs, and a midwife at the top of the salary scale would make twice as much as the highest paid RN. These agreements also impose restrictions on the employees in the disputed classifications that are not imposed on the RNs. In addition, the midwives' AMMS contracts also include a distinguishing bonus structure and require on-call hours. These factors sufficiently distinguish the employees in these categories from the RNs such that their inclusion in the RN voting unit is not mandated or required.

2. A RN-Only Professional Voting Unit is Appropriate Under the Healthcare Unit Rules

Although *PCC Structurals* involved a non-healthcare employer, the Board in a footnote reinstated the standard for non-acute healthcare facilities established in *Park Manor Care Center*, 305 NLRB 872 (1991). 365 NLRB No. 160, slip op. at 1 n.3. Under *Park Manor*, the Board looks at community of interest factors plus background information gathered during the healthcare rulemaking and prior cases involving either the type of unit sought or the particular type of healthcare facility at issue. 305 NLRB 872 at 875. Under the healthcare unit rules, a unit comprised of RNs, excluding other professional employees, is appropriate. Therefore, the outcome here is identical whether the issue is analyzed under the healthcare rulemaking or *PCC Structurals*; nurse practitioners, physician assistants, and midwives do not have to be included this registered nurse professional employee voting unit.¹³ Therefore, under either analysis, a voting unit comprised of only registered nurses is appropriate.

3. The Clinical Coordinator Must be Voted Under Challenge

The record evidence on the clinical coordinator is scant. There is no evidence as to her daily duties or responsibilities. The leading and conclusory testimony regarding her supervisory status without any foundation is unpersuasive. Even her licensure is unknown and there is insufficient evidence as to whether she is a RN or that a nursing degree is required for the position. The record does demonstrate, however, that the position is salaried and, when that is broken into an hourly wage it ranges between \$30 and \$40 an hour. The parties have stipulated that the clinical coordinator would, if found to be included in the unit, belong in a unit of professionals. Thus, I direct that the clinical coordinator be allowed to vote subject to challenge in Voting Group/Unit A.

¹³ The Board has held that a RN-only bargaining unit can be appropriate in a non-acute healthcare setting. *South Hills Health System*, 330 NLRB 653, 657 (2000) (discussing *Park Manor*, 305 NLRB at 874-75).

III. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁴
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit (combined unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time RNs, LPNs, X-Ray Technicians, X-Ray Assistants, X-Ray Assistant/Receptionists, Ultrasound Technicians, Phlebotomists, Phlebotomist/MedTechs, Medical Assistants, Medical Assistant/Athletic Trainers, Surgical Schedulers, Receptionists, Administrative Assistants, Administrative Assistant/Schedulers, Transcriptionists, Admin Coordinators, LPN Coordinators, Billers, Senior Billers, Coders, Prior Authorization Representatives, Triage Specialists and Provider Enrollers employed at the Employer's 17 Lansing Street, Suite 1157 Auburn, New York; 77 Nelson Street, Suites 120, 130, 220, 240, and 320, Auburn, New York; 17 East Genesee Street, Suite 101, Auburn, New York; 24 State Street, Seneca Falls, New York; 161 Genesee Street, Suites 106 and 203, Auburn, New York; 143 North Street, Auburn, New York; and 37 West Garden Street, Suites 105, 201 and 203, Auburn, New York facilities; excluding all other professional employees, confidential employees, guards, and supervisors as defined in the Act.

¹⁴ The parties stipulated to commerce at the outset of the hearing.

6. The parties stipulated, and I find, that the registered nurses (RNs) are professional employees under Section 2(12) of the Act who must be accorded a *Sonotone*¹⁵ election to determine whether they wish to be included in a unit with nonprofessional employees. I therefore direct an election in the following voting groups, each of which constitute a separate appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

Voting Group/Unit A (Professionals)

All full-time and regular part-time RNs, employed by the Employer at the Employer's 17 Lansing Street, Suite 1157 Auburn, New York; 77 Nelson Street, Suites 120, 130, 220, 240, and 320, Auburn, New York; 17 East Genesee Street, Suite 101, Auburn, New York; 24 State Street, Seneca Falls, New York; 161 Genesee Street, Suites 106 and 203, Auburn, New York; 143 North Street, Auburn, New York; and 37 West Garden Street, Suites 105, 201 and 203, Auburn, New York locations; excluding all other professional employees,¹⁶ including nurse practitioners, physician assistants, midwives, confidential employees, guards, and supervisors as defined in the Act.

Voting Group/Unit B (Nonprofessionals)

All full-time and regular part-time LPNs, X-Ray Technicians, X-Ray Assistants, X-Ray Assistant/Receptionists, Ultrasound Technicians, Phlebotomists, Phlebotomist/MedTechs, Medical Assistants, Medical Assistant/Athletic Trainers, Surgical Schedulers, Receptionists, Administrative Assistants, Administrative Assistant/Schedulers, Transcriptionists, Admin Coordinators, LPN Coordinators, Billers, Senior Billers, Coders, Prior Authorization Representatives, Triage Specialists, and Provider Enrollers employed by the Employer at 17 Lansing Street, Suite 1157 Auburn, New York; 77 Nelson Street, Suites 120, 130, 220, 240, and 320, Auburn, New York; 17 East Genesee Street, Suite 101, Auburn, New York; 24 State Street, Seneca Falls, New York; 161 Genesee Street, Suites 106 and 203, Auburn, New York; 143 North Street, Auburn, New York; and 37 West Garden Street, Suites 105, 201 and 203, Auburn, New

¹⁵ *Sonotone Corporation*, 90 NLRB 1236 (1950).

¹⁶ The classification of clinical coordinator held by Melissa Lucak will be allowed to vote subject to challenge, and her inclusion in the unit and her eligibility to vote will be resolved in a post-election proceeding, if necessary.

York; excluding all professional employees, confidential employees,¹⁷ guards, and supervisors as defined in the Act.

7. The employees in Voting Group A will be asked the following two questions on their ballots to which the choice for an answer will be “YES” or “NO”:
 1. Do you wish to be included in the same unit with nonprofessional employees of the Employer for the purpose of collective bargaining?
 2. Do you wish to be represented for the purposes of collective bargaining by 1199 SEIU Healthcare Workers East?
8. If a majority of the professional employees in Voting Group A vote “Yes” to the first question, indicating their wish to be included in a unit with nonprofessional employees, they will be so included in the combined unit, as described above. Their votes on the second question will then be counted together with the votes of the nonprofessional employees in Voting Group B to decide whether (or not) the Petitioner has been selected to represent the combined bargaining unit.
9. If a majority of the professional employees do not vote for inclusion in the same bargaining unit with nonprofessional employees, they will not be included with the nonprofessional employees. Their votes on the second question will be counted to decide whether or not they wish to be represented by the Petitioner in a separate professional unit.
10. The employees in the nonprofessional Voting Group B will be polled to determine whether or not they wish to be represented for collective bargaining purposes by 1199SEIU Healthcare Workers East, to which the choice for an answer will be “YES” or “NO”.
11. In the event that the professional employees vote for separate representation, the separate appropriate units will be described as set forth respectively in Voting Group/Unit A and Voting Group/Unit B.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned among the employees in the voting groups found appropriate in this Decision on the date, times, place and manner set forth in the Notices of Election issued herewith. Employees will vote whether or not they wish to

¹⁷ As the classification of coder held by Jamie L. Congdon is a possible confidential position, she will be allowed to vote subject to challenge, and her inclusion in the unit and eligibility to vote will be resolved in a post-election proceeding, if necessary.

be represented for purposes of collective bargaining by **1199SEIU Healthcare Workers East**. In addition and because this unit includes professional and nonprofessional employees who cannot be joined in a single unit without the desires of the professional employees being determined in a separate vote, the eligible professional employees will vote whether or not they wish to be included in the same unit with nonprofessional employees of the Employer for the purposes of collective bargaining.

A. Election Details

In view of the fact that the Petitioner waived its right to have the Voter List for the normally required period, the election will be held on October 18, 2018 from 7:30 a.m. until 9:30 a.m. and 11:30 a.m. until 4:00 p.m. at the following Auburn, NY locations: 161 Genesee Street (second floor conference room); 77 Nelson Street, Suite 120 (break room); 37 West Garden Street, Suite 201 (break room); and 17 E. Genesee Street (break room).

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **September 29, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

In eligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **October 10, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Work (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) and by last name. Because the list will be used during the election, the font size of the list must be equivalent of Times New Roman 10 or larger. That font does not need to be used, but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, a request for review may be filed at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. A party is not precluded from filing a request for review on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: October 5, 2018

/s/ Paul J. Murphy

PAUL J. MURPHY
Regional Director
National Labor Relations Board – Region 3
130 S. Elmwood Ave., Ste. 630
Buffalo, NY 14202-2465